

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LAWRENCE GROCE,

Plaintiff,

v.

WASHINGTON RIVER
PROTECTION SOLUTIONS, LLC, a
Delaware limited liability company,

Defendant.

NO: 4:15-CV-5063-TOR

STIPULATED PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for Protective Order (ECF No. 13). This motion was submitted for consideration without oral argument. The Court has reviewed the motion and the file therein, and is fully informed. For good cause shown, the motion is granted.

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this

1 agreement is consistent with LCR 26(c). It does not confer blanket protection on
2 all disclosures or responses to discovery, the protection it affords from public
3 disclosure and use extends only to the limited information or items that are entitled
4 to confidential treatment under the applicable legal principles, and it does not
5 presumptively entitle parties to file confidential information under seal.

6 **1. "CONFIDENTIAL" MATERIAL**

7 "Confidential" material shall include the following documents and tangible
8 things produced or otherwise exchanged:

- 9 • Medical records;
- 10 • Tax returns;
- 11 • Personnel-related documents; and
- 12 • Documents exempted from the Freedom of Information Act.

13 **2. SCOPE**

14 The protections conferred by this agreement cover not only confidential
15 material (as defined above), but also (1) any information copied or extracted from
16 confidential material; (2) all copies, excerpts, summaries, or compilations of
17 confidential material; and (3) any testimony, conversations, or presentations by
18 parties or their counsel that might reveal confidential material. However, the
19 protections conferred by this agreement do not cover information that is in the
20 public domain or becomes part of the public domain through trial or otherwise.

1 **3. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 3.1 Basic Principles. A receiving party may use confidential material that is
3 disclosed or produced by another party or by a non-party in connection with
4 this case only for prosecuting, defending, or attempting to settle this
5 litigation. Confidential material may be disclosed only to the categories of
6 persons and under the conditions described in this agreement. Confidential
7 material must be stored and maintained by a receiving party at a location and
8 in a secure manner that ensures that access is limited to the persons
9 authorized under this agreement.

10 3.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
11 ordered by the court or permitted in writing by the designating party, a
12 receiving party may disclose any confidential material only to:

13 (a) the receiving party’s counsel of record in this action, as well as
14 employees of counsel to whom it is reasonably necessary to
15 disclose the information of this litigation;

16 (b) the officers, directors, and employees (including in house
17 counsel) of the receiving party to whom disclosure is
18 reasonably necessary for this litigation, unless the parties agree
19 that a particular document or material produced is for
20 Attorney’s Eyes Only; and

- 1 (c) experts and consultations to whom disclosure is reasonably
2 necessary for this litigation and who has signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A).
- 4 (d) the court, court personnel, and court reporters and their staff;
- 5 (e) copy or imaging services retained by counsel to assist in the
6 duplication of confidential material, provided that counsel for
7 the party retaining the copy or imaging service instructs the
8 service not to disclose any confidential material to third parties
9 and to immediately return all originals and copies of any
10 confidential material;
- 11 (f) during their depositions, witnesses in the action to whom
12 disclosure is reasonably necessary and who have signed the
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A),
14 unless otherwise agreed by the designating party or ordered by
15 the court. Pages of transcribed deposition testimony or exhibits
16 to depositions that reveal confidential material must be
17 separately bound by the court reporter and may not be disclosed
18 to anyone except as permitted under this agreement;
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(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or know the information.

3.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

4 DESIGNATING PROTECTED MATERIAL

4.1 Exercise of Restraint and Care in Designating Material for Protection.

Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an
3 improper purpose (e.g., to unnecessarily encumber or delay the case
4 development process or to impose unnecessary expenses and burdens on
5 other parties) expose the designating party to sanctions. If it comes to a
6 designating party's attention that information or items that it designated for
7 protection do not qualify for protection, the designating party must promptly
8 notify all other parties that it is withdrawing the mistaken designation.

9 4.2 Manner and Timing of Designations. Except as otherwise provided in this
10 agreement (see, e.g., second paragraph of section b(i) below), or as
11 otherwise stipulated or ordered, disclosure or discovery material that
12 qualifies for protection under this agreement must be clearly so designated
13 before or when the material is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic
15 documents and deposition exhibits, but excluding transcripts of
16 depositions or other pretrial or trial proceedings), the designating
17 party must affix the word "CONFIDENTIAL" to each page that
18 contains confidential material. If only a portion or portions of the
19 material on a page qualifies for protection, the producing party also
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1 must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) Testimony Given in deposition or in other pretrial or trial proceedings:

4 the parties must identify on the record, during the deposition, hearing,
5 or other proceeding, all protected testimony, without prejudice to their
6 right to so designate other testimony after reviewing the transcript.

7 Any party or non-party may, within fifteen days after receiving a
8 deposition transcript, designate portions of the transcript, or exhibits
9 thereto, as confidential.

10 (c) Other tangible items: the producing party must affix in a prominent
11 place on the exterior of the container or containers in which the
12 information of item is stored the word "CONFIDENTIAL." If only a
13 portion or portions of the information or item warrant protection, the
14 producing party, to the extent practicable, shall identify the protected
15 portion(s).

16 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
17 to designate qualified information or items does not, standing alone, waive
18 the designating party's right to secure protection under this agreement for
19 such material. Upon timely correction of a designation, the receiving party
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1 must make reasonable efforts to ensure that the material is treated in
2 accordance with the provisions of this agreement.

3 **5 CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 5.1 Timing of Challenges. Any party or non-party may challenge a designation
5 of confidentiality at any time. Unless a prompt challenge to a designating
6 party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant
8 disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge
10 promptly after the original designation is disclosed.

11 5.2 Meet and Confer. The parties must make every attempt to resolve any
12 dispute regarding confidential designations without court involvement. Any
13 motion regarding confidential designations or for a protective order must
14 include a certification, in the motion or in a declaration or affidavit, that the
15 movant has engaged in a good faith meet and confer conference with other
16 affected parties in an effort to resolve the dispute without court action. The
17 certification must list the date, manner, and participants to the conference. A
18 good faith effort to confer requires a face-to-face meeting or a telephone
19 conference.
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1 5.3 Judicial Intervention. If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain
3 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil
4 Rule 5(g), if applicable). The burden of persuasion in any such motion shall
5 be on the designating party. Frivolous challenges, and those made for an
6 improper purpose (e.g., to harass or impose unnecessary expenses and
7 burdens on other parties) may expose the challenging party to sanctions. All
8 parties shall continue to maintain the material in question as confidential
9 until the court rules on the challenge.

10 **6 PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
11 **IN OTHER LITIGATION.**

12 If a party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL,” that party must:

15 (a) promptly notify the designating party in writing and include a copy of the
16 subpoena or court order.

17 (b) promptly notify in writing the party who caused the subpoena or order to issue
18 in the other litigation that some or all of the material covered by the subpoena or
19 order is subject to this agreement. Such notification shall include a copy of this
20 agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

7 UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

8 INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502.

1 **9 NON TERMINATION AND RETURN OF DOCUMENTS**

2 Within 60 days after the termination of this action, including all appeals,
3 each receiving party must return all confidential material to the producing party,
4 including all copies, extracts and summaries thereof. Alternatively, the parties may
5 agree upon appropriate methods of destruction.

6 Notwithstanding this provision, counsel are entitled to retain one archival
7 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
8 correspondence, deposition and trial exhibits, expert reports, attorney work
9 product, and consultant and expert work product, even if such materials contain
10 confidential material.

11 **SUMMARY**

12 Any disputes concerning the terms or implementation of this Protective
13 Order shall be resolved by the Court.

14 The confidentiality obligations imposed by this agreement shall remain in
15 effect until a designating party agrees otherwise in writing or a court orders
16 otherwise.

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1 **ACCORDINGLY, IT IS HEREBY ORDERED:**


2 The parties' Stipulated Motion for Protective Order (ECF No. 13) is

3 **GRANTED.**

4 The District Court Clerk is directed to enter this Order and provide copies to
5 counsel.

6 **DATED** January 12, 2016.



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THOMAS O. RICE
United States District Judge

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